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The Solicitors' Journal

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The Solicitors' Journal

VOL. LXXVII. **Saturday, November 4, 1933.** No. 44

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Current Topics.

Legal Maxims and their Perils.

"A MAXIM," says Sir FREDERICK POLLOCK, "is a phrase embodying some legal idea of common application in a concise and portable form." By reason of their brevity and portability maxims have always been popular, but dangers lurk in their use on this very account, against which Lord ESHER, in the well-known case of *Yarmouth* v. *France*, 19 Q.B.D. 653, protested with his customary vigour. "I detest," said he, "the attempt to fetter the law by maxims. They are almost invariably misleading; they are for the most part so large and general in their language that they always include something which really is not intended to be included in them." In so saying, that very distinguished judge was of course thinking of the inability of maxims to state the law with that precision which is essential for correctness; but these crisp phrases, at all events when garbed in the Latin tongue, have further dangers lurking in their employment. A striking example of this was furnished by the transcript of a judgment read in the Court of Appeal last week, which attributed to the trial judge the remarkable statement that he would leave to the jury only the question arising out of the plea of "which were fit injuries"—a mystic phrase which, on further examination, turned out to be the shorthand writer's rendering of the maxim, "*Volenti non fit injuria*," a perversion similar to the absurd version given some years ago of another Latin phrase, "*ejusdem generis*." A certain judge stated that he would in the interpretation of the document before him apply the *ejusdem generis* rule of construction. This was rendered by the reporter of a morning journal as follows: "The judge said that in interpreting the document he would apply the just and generous rule of construction." If the learned judge saw this report he must have been highly astonished at the novel version of his words. Latin has its uses but likewise its perils.

Privy Council and Irish Free State Appeals.

THE announcement that the Free State Senate on 31st October passed three Bills amending the Constitution, in such a manner as to do away with practically the last remaining traces of British sovereignty, will probably cause but little stir at present in Great Britain. One of the three Bills however—the Constitution (Amendment No. 22) Bill, which abolishes the right of appeal by Free State citizens to the Privy Council, is a direct violation of the treaty by which the Free State was given the liberty it sought to legislate for itself; and an interesting situation is likely to arise when the case of *Moore & Others* v. *Attorney-General for Irish Free State and Others* comes up for hearing. This case, which relates to the Erne Fishery dispute, was before the Privy Council on 9th October, upon petition for leave to appeal. This was granted, and in due course will, therefore, have to be argued. In the event of the appeal succeeding, the question of enforcing the judgment would necessarily arise; and inasmuch as the respondents ignored the petition and have (apparently) no intention of varying that attitude, interesting developments may be expected should the appeal be allowed. The dispute would seem to affect interests in Northern Ireland where the courts were stated by counsel for the petitioners to have taken the contrary view with regard to the dispute to that taken by the Supreme Court of the Irish Free State, which reversed a decision by Mr. Justice JOHNSON, who, in the course of his judgment, described the respondents' case as "an interesting speculation as to what the law was." (*Vide The Times*, 10th October.)

"Public Mischief."

AN addition to the varied catalogue of offences judicially held to be tending to public mischief and to common-law misdemeanours appears to have been made in *R.* v. *Brown* (*The Times*, 20th October). The statement above is purposely qualified by the fact that more than one charge was made against the prisoner, and the report is not clear whether he was convicted and sentenced on both or otherwise. The case related to the practice, obviously one which needs drastic suppression, of arranging for French prostitutes to come and reside and ply their vocation within the jurisdiction, and preventing their subsequent deportation by procuring their marriages to needy Englishmen, bribed for the purpose, the women thus gaining English nationality. BROWN was charged with conspiring to effect a public mischief by procuring such a marriage and also with conspiring to procure the woman to be a common prostitute within the United Kingdom, presumably under s. 2 (2) of the Criminal Law Amendment Act, 1883. GEORGE FOULSTONE, who would have married the woman but for his arrest at the registry office, was charged with him. Both were found guilty, presumably on each charge, and the police then testified that BROWN had habitually made a practice of this kind of transaction. The Recorder of London, in imposing the severe sentence of twenty-three months' imprisonment with hard labour on him, observed as to a "lacuna in our law" worthy of the attention of Parliament. BROWN'S offences certainly deserved punishment, but the difficulty of framing legislation is obvious. Every Englishman is entitled to marry any single woman he pleases outside the prohibited degrees, not excluding a prostitute of any nationality, and in doing so is within the law. To restrict this liberty would be a strong measure. As to the charge of doing an act tending to cause public mischief, perhaps we may

refer to our previous note (76 SOL. J. 877) on the experiment of applying it to the act of hoaxing the police. This type of prosecution is now, to use a popular phrase, "going strong," and the case of the imaginary lion of vegetarian principles (and which, no doubt, in accordance with hallowed precedent, roared as gently as any sucking-dove) roaming about the Coast of Sussex, will be fresh in our readers' memories. In the case of *R.* v. *Manley*, the subject of our previous comment, the hoax was successful, so it is left doubtful what the result would be if the charge was one of making an unsuccessful attempt. If such a charge would not lie, part of the element of the offence must be the credulity of the Force.

"*Quis custodiet ipsos custodes?*"

MR. A. P. HERBERT has written to *The Times* (16th October) calling attention to a one clause bill, presented in 1897, and to the case of *Williamson* v. *Norris* [1899] 1 Q.B. 7, in which a barman serving at a bar in the precincts of the House of Commons was charged with unlawfully selling liquor by retail. The basis of the accusation was that the premises were not licensed. The defence was that the man was merely a servant, and, in any case, that the House of Commons was above the law. The Westminster magistrate over-ruled the defence of service, but sustained that of the exalted position of the House. On appeal to the King's Bench, RUSSELL, L.C.J., and WILLS, J., held, reversing the magistrate, that the defence of mere service prevailed. It was not, therefore, necessary to decide on the other point, but they told the world, in no uncertain voice, that they were very far from convinced of the soundness of the proposition advanced on behalf of the House by the law officers. If memory serves, "Punch" had a picture of the late Lord ALVERSTONE, then Sir R. WEBSTER, Attorney-General, dressed as a policeman, telling the Commons that they wanted a "Hact of Parliament" to put themselves right. In fact, as Mr. HERBERT points out, no such "Hact" has ever been passed. Since the case was decided the Licensing (Consolidation) Act, 1910, has come into force, and s. 65 of that Act has replaced the corresponding section of the Licensing Act, 1872, under which *Williamson* v. *Norris* was decided. The previous exemptions and savings, however, were repeated in s. 111 of the 1910 Act without any addition in respect of the bars of the House of Commons, and, substantially, the position remains unaltered since the case was decided. Mr. HERBERT, with good reason, objects to a situation in which, on high authority, the House of Commons appears to flout the law in this way, and suggests that there should either be another test case (which he states he is willing to bring if the Kitchen Committee will defray the cost), or that a short Act should be passed to legalise the position. In fact, this should have been done over thirty years ago. In respect of the sale of liquor at the Law Courts, since the catering is done through contractors and not by a committee of judges, presumably the company holding the contract complies with the Act of Parliament.

"Contracting" a Disease.

THE question when a disease is first "contracted" so as to bring it within the terms of an insurance policy indemnifying an insured under the Workmen's Compensation Act, 1925, the Employers' Liability Act, 1880, Lord Campbell's Act, 1846, or at common law, against liability, however protracted, in respect of personal injury or disease, fatal or non-fatal, "which during the continuance of this policy shall be sustained or contracted by any workman while in the employers' direct employ" was discussed in *R. Smith & Son* v. *Eagle, Star and Dominion Insurance Co. Ltd.*, on 18th October (77 SOL. J. 765). On 31st March, 1928, an employee named HILL entered the appellants' employment as a file cutter. On 16th June, 1928, HILL was moved to some other work and he left the appellants' employment on 31st October, 1931. On 30th December, 1932, he was certified by the Silicosis Board as being totally disabled by silicosis and tuberculosis, the date of the commencement of the disablement being certified as 18th July, 1932, and his last employers being stated to be the appellants. The appellants admitted liability under the Silicosis Scheme, and paid HILL 30s. per week. The policy had been taken out on 30th June, 1927, and the premium in respect of HILL had been duly paid until it lapsed on 16th June, 1930. On 28th September, 1927, the respondents wrote to the appellants saying that the policy would protect the appellants against claims by employees in respect of silicosis. HILL's disease was due to his work, he having been continuously employed by other employers in work of the same kind for more than twenty years before 31st March, 1928. The arbitrator found that the disease was contracted before the lapse of the policy in June, 1930, but that it was gradual, and it was impossible to say when it commenced. Mr. Justice ROCHE gave judgment in favour of the appellants. In the course of his judgment his lordship said that the word "contracted" covered the gradual progress of the disease and was not limited to the period when the disease was first contracted. On a true construction of the documents the disease was contracted while the policy was in existence and therefore the respondents were liable in it. The authorities are somewhat conflicting on the question of the date of contraction of an industrial disease. Lord WRENBURY said in *Victoria Insurance Co.* v. *Junction North Broken Hill Mine* [1925] A.C., at p. 357: "The date of contraction of the disease and not the date of its ascertainment or its certification is the date for fixing liability." Later in the same judgment Lord WRENBURY said (at p. 357): "The disablement . . . establishes the happening of the accident, but not the date at which it happened." In a claim under a similar policy to that under consideration in respect of the contraction of miner's nystagmus in *Ellerbeck Collieries Ltd.* v. *Cornhill Insurance Co.* [1932] 1 K.B. 401, SCRUTTON, L.J., quoted Lord SUMNER, who said in *Blatchford* v. *Staddon & Founds* [1927] A.C. 461: "The difficulty of proving the date when the disease was contracted is met by treating the date of disablement as the date of the happening of the accident," preferring this dictum to that of Lord WRENBURY. Whatever be the true view as between these conflicting authorities, there can be little doubt that in the present instance Mr. Justice ROCHE was correct in finding against the insurance company.

Co-operative Societies and Income Tax.

THE announcement that the co-operative societies are preparing to circumvent the newly-imposed requirements of the law in regard to taxation of profits by distributing larger "dividends" to their customers, is not likely to succeed to any great extent. At the most it might involve a slight legal adjustment, the effect of which would probably be much more far-reaching than the co-operative societies' advisers realise. Little sympathy is likely to be felt by the general body of the public who are not members of co-operative societies toward this attitude with regard to the payment of income tax on a basis which is even now much more favourable to co-operative societies than to private trading concerns; and it will not be surprising if, when the matter comes before Parliament again, the question will be raised as to why any private trading concern transacting retail business with the industrial classes should not be allowed to treat as a "discount" any rebate made annually or otherwise on purchases by regular customers without having to register under the Friendly Societies Acts, and thus escape payment of income tax to a larger degree in the same way as it obtains under co-operative methods. In any event, action such as has been adumbrated by the co-operative societies cannot be allowed to pass unchallenged by the Government, and it is, therefore, much to be hoped that wiser counsels will prevail and that the co-operative societies will not imperil their own progress by persisting in a course of action that cannot be regarded as otherwise than mistaken if not actually unpatriotic.

Sale of "New" Car.

WHERE, in a contract of sale, the article to be sold is described as new, does the word "new" imply a condition that the article delivered shall correspond with the description, or is it an express term of the contract that the article to be delivered shall be a new one? That was the question which the Court of Appeal had to decide in the recent case of *Andrews Brothers (Bournemouth) Limited* v. *Singer & Co. Limited.*

In that case the plaintiffs had been appointed by the defendants their sole dealers within a particular area for the sale of new Singer motor cars, and the plaintiffs had agreed to purchase from the defendants a certain number of those motor cars. In pursuance of that agreement the plaintiffs ordered from the defendants one eighteen horse-power saloon car, and the defendants agreed to deliver the same on a date named. The plaintiffs said that it was an express term, or, alternatively, an implied term, of the contract that the motor car to be delivered should be a new Singer car. Delivery of the car was in fact taken by the plaintiffs' managing director at the defendants' works at Birmingham. The plaintiffs' managing director, on taking delivery, noticed that the speedometer recorded that the car had run 550 miles. He also found in one of the pockets a parking ticket issued at Leicester. But he raised no questions at that time about the distance which the car had already run as indicated by the speedometer and the Leicester parking ticket. The motor car was duly delivered to the plaintiffs at Bournemouth.

According to the evidence at the trial, an agent of the defendants, at Darlington, wanting to show a Singer car to a prospective customer, and not having one in stock, had asked the defendants to send one from their works to Darlington. Accordingly, before the motor car in question was purchased by the plaintiffs, it had been driven from Birmingham to Darlington, and thence twenty miles beyond, to be shown to a prospective customer. As, however, the prospective customer did not buy it, it was driven back to the defendants' works at Birmingham. It was then adjusted, and, as the trial judge found, was in good mechanical condition when sold to the plaintiffs.

The plaintiffs brought an action against the defendants, alleging that by reason of what had taken place, the motor car which was delivered to them was not a new one, and they alleged that they had lost the profit on the re-sale of a new car, and had been put to certain expenses and they claimed damages. The defendants denied liability, and said, among other things, that the plaintiffs' representative, in the exercise of his own skill and judgment, had taken delivery of and paid for the car as a new car.

The action came on before Goddard, J., who held (1) that the car was not a new car when sold to the plaintiffs; (2) that the defendants' obligation under the contract was to supply a new car; and (3) that, as the defendants had not delivered a new car, the plaintiffs were entitled to damages, which he assessed at £50, together with an indemnity in respect of certain expenses which they had incurred.

When the case came to the Court of Appeal the defendants did not contest the finding that the car which they had delivered to the plaintiffs was not a new car, but they relied on cl. 5 of the agreement between them and the plaintiffs, which provided that: "All cars sold by the company (i.e., the defendant company) are subject to the terms of the warranty set out in sched. No. 3 of this agreement, and all conditions, warranties and liabilities implied by statute, common law or otherwise are excluded," and said that as in the contract the car to be sold was described as a new car, it was a sale by description, and by virtue of s. 13 of the Sale of Goods Act, 1893, there was an implied condition that the goods should correspond with the description. Such an implied condition, it was argued, was excluded by cl. 5 of the agreement as that clause contained the term "conditions," which was not included in the corresponding clause in *Wallis, Son and Wells* v. *Pratt and Haynes* [1911] A.C. 394.

In *Bowes* v. *Shand* (1877), 1 App. Cas. 455, Lord Blackburn said that if an article sold is described, the description amounted to a warranty or a condition precedent that it should be an article of the kind described. The words of a contract must be construed in their plain and ordinary meaning. If you contract to sell peas you cannot oblige a party to take beans. If the description of the article tendered is different in any respect it is not the article bargained for. It is an utter fallacy, when an article is described to say that it is anything but a warranty or a condition precedent that it should be an article of that kind, and that another article might be substituted for it. In *Bowes* v. *Shand, supra*, there was a contract to ship rice in a particular month. It was held that that contract was not complied with by shipment a few days before the end of the previous month. A purchaser is entitled to have an article answering the description of that which he bought. See *Gompertz* v. *Bartlett* (1853), 2 E. & B. 849. A statement in a sold note describing the goods sold amounts to an undertaking by the seller that the goods supplied shall answer to that description, which becomes a part of the contract. The statement in the sold note in *Allan* v. *Lake* (1852), 18 Q.B. 560, that the seeds sold were Skirving's swedes was in one sense descriptive, but it was descriptive of a known article of commerce, and it was held that the defendant was not at liberty to substitute another sort of turnip seed which did not answer that description. It was held that the statement amounted to a warranty that the seeds were Skirving's swedes.

In his dissenting judgment (subsequently approved by the House of Lords) in *Wallis, Son and Wells* v. *Pratt and Haynes* [1910] 2 K.B. 1003; [1911] A.C. 394, Fletcher Moulton, L.J., said that the obligations under a contract were not all of equal importance. There were some which went so directly to the substance of the contract, or, in other words, were so essential to its very nature that their non-performance might fairly be considered by the other party as a substantial failure to perform the contract. On the other hand, there were other obligations which, though they must be performed, were not so vital that a failure to perform them went to the substance of the contract. Both clauses were equally obligations under the contract, and the breach of any one of them entitled the other party to damages. But in the case of the former he had the option of treating the contract as being completely broken and (if he took proper steps) he could refuse to perform any of the obligations resting on him, and sue the other party for failure to perform the contract. Later usage had consecrated the word "condition" to describe an obligation of the former class, and "warranty" to describe an obligation of the latter class. The word condition was used in the text of the Sale of Goods Act, 1893, though there was no formal definition of it in the Act. "Warranty" was expressly defined in the Act as "an agreement with reference to the goods which are the subject of the contract, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated." It was clear from that definition that a breach of warranty entitled the other contracting party to damages only. In contrast to that the additional right in the case of a breach of a condition was fully recognised in s. 11 of the Sale of Goods Act, 1893. In all that the Act adopted the well-settled law that existed at the date when it was passed. A condition and warranty were alike obligations under a contract a breach of either of which entitled the other party to damages. In the case of a breach of condition, the other party had the option of repudiating the contract. Under s. 11 of the Act of 1893, there were two cases in which a party would be deemed to have elected to content himself with his right to damages. But he must act promptly. Those

two cases were (1) where the buyer had accepted the goods or part of them, and (2) where the contract was for the sale of specific goods the property in which had passed to the buyer.

In *Wallis, Son and Wells* v. *Pratt and Haynes, supra*, the material clause was: "Sellers give no warranty, express or implied, as to growth, description or any other matters, and they shall not be held to guarantee or warrant the fitness for any particular purpose of any grain, seed, flour cake or any other article sold by them, or its freedom from injurious quality or from latent defect." Fletcher Moulton, L.J.'s view was (and his view was subsequently upheld by the House of Lords) that the language of the contract created an obligation to deliver common English sainfoin. It would take express language in any contract to indicate any intention of negativing a right to damages for the breach of an obligation expressed in it. The Lord Justice could not find in the contract in that case any such language.

In the recent case of *Andrews Brothers (Bournemouth) Limited* v. *Singer and Co. Limited, supra*, the Court of Appeal held that it was an express term of the contract of sale that a new Singer car should be delivered by the defendants to the plaintiffs, that there was no question of any implied condition, and s. 13 of the Sale of Goods Act, 1893, did not apply. The defendants having broken an express term of the contract could not claim the protection of the clause excluding, *inter alia*, conditions.

Crown Prerogative and Tolls.

Among the various suggestions recently formulated with a view to cheapening and simplifying litigation reference has been made to the possibility of re-modelling the procedure as between the subject and the Crown so as to bring it more in conformity with that as between subject and subject. It is obviously realised, perhaps a little late in forensic history, that it is not desirable in the interests of justice that the Crown, by virtue of its position, should appear to possess any advantage not accorded to the subject where the determination of their respective rights is under consideration. Equity demands equality of treatment in such cases. There is, too, another matter where equity, in principle at all events, would seem to some extent to have been strained in favour of the Crown, namely, in the general exemption of the Crown from payment of tolls by virtue of the royal prerogative. It is, of course, well known that the doctrine as to the immunity enjoyed by the Crown from the payment of tolls arose, as was pointed out by Cockburn, C.J., in *Mayor, etc., of Weymouth* v. *Nugent* (1865), 6 Best & Smith, 22, in the times when tolls were leviable by virtue of a grant from the Crown, or by prescription from which a grant from the Crown was presumed, and, said Cockburn, C.J., "it might well be that when tolls were so granted the Crown did not intend to include itself in the liability to pay them." Such a principle and practice may well be justified where the Crown is not likely to indulge in any abnormal user of the ferry, but far from justifiable where Government servants in large numbers are continually using it. In the particular case with which we are about to deal the right to establish and maintain a ferry was conferred in 1790 by a Public Act of Parliament, which, in terms, by s. 15, provided that inasmuch as the owners of the ferry, which would be for the convenience of the public, would be put to considerable expense, they should not be assessed for the payment of any tax whatever in respect of the earnings of the ferry. And yet, despite the expense involved in establishing and maintaining the ferry, it has now been held, and undoubtedly accurately so far as the legal aspect of the matter is concerned, that naval, military and civil servants of the Crown, when on duty, are exempt from paying the toll, and this at a place where the ferry, by reason of its position, is constantly being used by servants of the Crown. It is only fair to say that *ex gratia* payments have in fact been made by the Crown in the past to cover the use of the ferry by its servants, but the fact remains that there was no legal obligation to pay, and recent payments were made under protest.

The ferry in question is that between Devonport and Torpoint—the Torpoint Ferry—between Devon and Cornwall, which was established, as stated, in 1790 by Public Act of Parliament. The Act (30 Geo. 3, c. 61) was "An Act for authorifing and enabling the Right Honourable George Earl of Mount Edgcumbe, and Reginald Pole Carew, Efquire, to eftablifh and maintain a Common Ferry over and acrofs the River Tamar, between a certain Place north of Plymouth Dock, in the Parifh of Stoke Damarel, in the County of Devon, and Torpoint, in the Parifh of Antony Saint Jacob, otherwife Antony in the Eaft, in the County of Cornwall." From the date of its establishment until 1920—for 130 years—the ferry was carried on by the original grantees and their successors in title. In 1920 the Cornwall County Council under the powers conferred by the Ferries (Acquisition by Local Authorities) Act, 1919, acquired the ferry from the owners in whom it was then vested. The matter now came before Mr. Justice Farwell on a claim by the Attorney-General that His Majesty by virtue of his Royal Prerogative and in right of his Crown is exempt from the payment of tolls for the use of the ferry by officers and men of His Majesty's forces and other servants of the Crown while on duty, and for the use of the ferry by vehicles laden or unladen while employed in the service of the Crown. The broad submission of the Solicitor-General (Sir Boyd Merriman, K.C.), who represented the Attorney-General, was that unless there was something in the Act of 1790 which was sufficient to charge the Crown or its servants with the payment of the toll, then the general prerogative of the Crown of exemption from toll would apply, and he submitted that there was nothing in the Act charging the Crown. The legal position, said the Solicitor-General, could not be affected by the fact that *ex gratia* payments had been made in the past to the owners of the ferry. Since 1923 payment of the tolls had been made by the Admiralty under protest and on the terms of a letter from the Admiralty to the Cornwall County Council to the effect that, while legal liability for tolls was not admitted, the Admiralty would be prepared, without prejudice, to consider an application for an annual *ex gratia* grant from naval funds towards any expenditure which the Council as owners of the ferry might incur in respect of its use by Admiralty personnel and transport.

It was also plain, it was contended, that the acquisition Act of 1919 did not create any duty in the Crown to pay tolls if that duty did not already exist. It really comes back to whether there was in this case an express enactment subjecting the Crown in some form or another to toll, for it has long been a recognised principle that, except in certain cases, the Crown is not bound by an Act of Parliament unless specifically named in it. This rule respecting the exemption of the Crown from burdens imposed by statute is laid down in *Warren* v. *Smith*, 1 Rol. Rep. 151, and one reason there assigned is: "*Que est contre reason et nature que home faiera ascun chose contre luy mesme et al son prejudice demesne sans (se) nosmer.*" On the contrary it has also been stated that "the Act is penned in the name of the King, viz., the King commandeth, and therefore the King bindeth himself." However, the principle of Crown exemption is well established and accepted in a number of authorities in this connection. It may also be observed that the Post Office Act, 1908, s. 79 of which is headed "Exemption from Tolls," provides that: "(1) No person shall demand any toll on the passing of any carriage or horse conveying mail bags at places where tolls are otherwise demandable. . . . (3) If any ferryman . . . demands any toll for any mail . . . he shall be liable . . . to a fine not exceeding £5."

In the present case counsel for the Cornwall County Council said that he did not accept the statement that in Public Acts of Parliament in respect of not charging the fact had got to be expressly mentioned; he submitted that it was a question of construction upon the Act as a whole. And, he said, when one looked at s. 15 of the Act of 1790, the section which exempted the ferry owners from taxes, one found an indication that the Crown was bound by the Act. That section, added counsel, must be his sheet anchor. It took away from the Crown the right to taxes, and was not that really the same as saying "this Act binds the Crown," and by inference that the Crown was bound by the whole of it, and therefore any prerogative rights of the Crown as regards tolls was gone? This argument the Solicitor-General described as "fantastic," and Mr. Justice Farwell, in his judgment, said that to put such a construction on the Act would really do violence to the language which was used, and he held that servants of the Crown, while on duty, were exempt from payment of the toll.

Costs.

REMUNERATION OF SOLICITOR-TRUSTEE.

We have dealt with the position that arises where the executor of a Will is a solicitor, and we have observed that in such a case he may not charge for his professional services, or, in fact, for his services at all, in relation to the trusts imposed upon him if he is not specifically authorised by the Will so to do. We now propose reviewing the position where the Will does, in fact, give the executor the right to charge for his services.

The drafting of the form of clause in which this power is given to charge for work done in relation to an estate requires very careful consideration, for such clauses may fall into one of two classes, namely (*a*) those which give the solicitor power to charge for his professional services only, and (*b*) those which give him power to charge not only for his professional services, but also for all work done and time expended in relation to the estate. It may be noticed here that Kay, J., in the case of *In re Chappell*, 27 C.D. 584, pointed out that a solicitor should not insert a clause in a Will drawn by him, which gives the solicitor-executor the power to charge for his professional and non-professional services, without especially drawing the client's attention to the effect of such a clause. It is not, in fact, thought that a solicitor would do so, but it is perhaps not out of place to observe that the client has not been properly advised of the effect of the clause unless it is pointed out to him that ordinarily an executor or trustee is not entitled to any remuneration for his services whatever, professional or otherwise.

There is little difficulty about the clause which gives the solicitor-executor power to charge for his professional work, and the following were the material words in a Will which came before the courts in the case of *Harbin* v. *Darby*, 28 Beav. 325: "It is my will and desire, that in the execution of this my Will, the said . . . shall be at liberty to charge for his professional services as if he had not been appointed an executor and trustee of this my Will."

Again, in the case of *In re Chalinder & Herington* [1907] 1 Ch. 58, the Will provided that "my executor and trustee shall be the solicitor of my trust property and shall be allowed all professional and other charges for his time and trouble, notwithstanding his being such executor and trustee," and it was held that the executor was entitled to his professional charges for work properly done as solicitor.

The chief difficulty in these cases is to differentiate between the work done as solicitor and the work done as executor or trustee. Thus, as Kay, J., observed in the case of *Re Chappell*, *supra*, "a trustee or executor would not employ, or ought not to employ, a solicitor to do things which he could properly do himself."

It was held, in *Harbin* v. *Darby*, *supra*, that the solicitor-executor was entitled to charge for all professional work which he could, as executor, employ a solicitor to do. Thus, he could not charge for attending on the beneficiaries of the Will, paying them their legacies, or on the creditors of the estate to pay the debts, because this was work which he would, as executor, normally do himself. These cases, must, however, be read in conjunction with s. 23 (1) of the Trustee Act, 1925, which provides that: "Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether a solicitor, banker, stockbroker or other person to transact any business or do any act required to be transacted or done in the execution of the trust . . . and shall be entitled to be allowed and paid all charges and expenses so incurred." It would seem, therefore, that the solicitor-executor might now charge for these and similar services, for clearly, under s. 23 (1), he would be entitled as trustee to employ a solicitor to perform them for him if he was so minded, and could, therefore, following the principle laid down in *Harbin* v. *Darby*, *supra*, charge professionally for the same work.

The more difficult problem hitherto arose in those cases where the solicitor-executor or trustee was empowered to charge not only for the professional work, but also for non-professional work. In order that he may be entitled to remuneration in respect of the work ordinarily done by lay executors and trustees, there must be a very clear and specific authority in the Will itself. Reference may be made to the case of *Re Fish: Bennett* v. *Bennett* [1893] 2 Ch. 413, where the relevant clause in the Will contained such an express authority as entitled the solicitor-trustee to charge, as Kay, L.J., observed, "not only for work which is the proper work of a solicitor done for a client, but also to charge for work which he would be bound to do as trustee, or which he might do as trustee, and which would not properly be solicitor's work, as though it were professional work." As stated earlier, however, s. 23 (1) of the Trustee Act, 1925, has simplified the position considerably, and it seems that there is no reason now why the solicitor-trustee may not be remunerated for all work done by him in the management and administration of the estate, providing it is work which he would normally perform as a solicitor if he were acting for an independent client, and not for himself *qua* trustee.

Where, however, the solicitor-trustee does work which is not professional work, and there is a clause in the Will empowering him to charge for non-professional work, then he will charge for that work on the basis that it is, in fact, professional work: see the observations of Kay, L.J., quoted above.

It was settled in the case of *Pedley Wallace* v. *Wallace* [1927] 2 Ch. 168, that where the solicitor has power to charge for his services then he may charge for any work done in connection with the statutory trusts imposed by the Law of Property Act, 1925.

It must be specially noticed also that this power to charge for work done as executor, is, in fact, a legacy, and accordingly the solicitor-executor who has power to charge must not attest a Will, as a witness, otherwise the clause entitling him to remuneration will be void under s. 15 of the Wills Act. Moreover, where the estate is insufficient to pay all the legacies in full, then the solicitor-executor must abate his charges with the other legacies in the same degree: see *Brown, Wace* v. *Smith* [1918] W.N. 118.

THE BAR AND LORD MERRIVALE.

Lord Merrivale, the late President of the Probate, Divorce and Admiralty Division, has accepted an invitation from the Bar of England to a dinner on 6th December. It is expected that the dinner will be held in Lincoln's Inn Hall, and that the Attorney-General will preside. Full arrangements will be announced later. The Hon. Secretary of the Dinner Committee is Mr. William Latey, 1, Dr. Johnson's-buildings, Temple, E.C.4.

Company Law and Practice.

Rights and Duties of Directors.

LAST week we discussed certain decisions of the courts relating to the conduct by directors of the meetings of their boards. We approached the subject from the point of view of a director who was in a minority on the board and who found, or felt, that he was not having his fair share in the management of the company's affairs. I had hoped to have compressed what I had to say about meetings into the compass of last week's article, and to have devoted this week to the discussion of the rights of such a director as we have been talking about (*a*) in relation to the company, and (*b*) in relation to the board. Before we can go on to consider what these rights are, there are still a few points concerning the validity of board meetings which remain to be noticed, and which should, I think, be mentioned first.

We have seen that, if the articles empower them so to do, directors may delegate their powers to a committee, which may even be a committee of one. But if the board uses this power of delegation it does not thereby lose its power to act in the matter. There is always some doubt as to how far an informal discussion of all the directors not at a properly convened board meeting can be relied upon as giving validity to acts done by the directors in pursuance of such a discussion. It has been held that a number of directors, even though they constitute a majority of the board, cannot act without a meeting; nor can they act at a meeting notice of which has not been given to all the directors: see *Re Portuguese Copper Mines*, 42 Ch. D. 160. On the other hand, some doubt has been thrown upon the position by the old decision of *Collie's Claim*, 12 Eq. 246. It is not necessary for us to consider the facts, but there are certain passages from the judgment of Bacon, V.-C., which are material. There was an article providing that the acts of the directors should be binding on the company, and it was argued that that meant that the directors should act in their "combined wisdom," and that nothing was validly done unless it was done by three of them acting together (three being the quorum). What the Vice-Chancellor said was this: "If you are satisfied that the persons whose concurrence is necessary to give validity to the act did so concur, with full knowledge of all that they were doing, in my opinion the terms of the law are fully satisfied, and it is not necessary that whatever is done by directors should be done under some roof, in some place where they are all three assembled." In *Collie's Claim* the case of *D'Arcy* v. *Tamar Railway Company*, L.R. 2 Ex. 158, was relied upon for the purpose of showing that an agreement or a contract made by a company, not in the form prescribed by the rules, is not binding upon the company. Bacon, V.-C., most emphatically said that that case decides no such thing. In that case the seal of the company had been affixed to a bond by two directors instead of the three which were necessary under the articles. Bacon, V.-C., held that it was not necessary for the purposes of the decision in the *Tamar Case* to decide that the presence of all directors must be necessary at one time. He seems to have treated the decision as resting on a common law rule of pleading. At any rate, Cozens-Hardy, J., in *Re Haycroft Gold Company* [1900] 2 Ch. 230, preferred the view of the law taken in the *Tamar Case* to that of Bacon, V.-C., in *Collie's Claim*, whose argument he expresses himself unable to follow. In the *Haycroft Case* the secretary of the company convened an extraordinary meeting of the company without the express approval of any of the directors, and without a board meeting, although the matter had been discussed with the directors. It was held that the meeting had been improperly convened and that the resolutions purported to have been passed at it were ineffectual.

The well-known case of *Barron* v. *Potter* [1914] 1 Ch. 895, while not without its humour, is of importance from the point of view of directors of small companies. It was decided there that a board meeting of directors can be held under informal circumstances, but that the casual meeting of two directors even at the office of the company cannot be treated as a board meeting at the option of one against the will and intention of the other. It makes no difference that a notice convening a board meeting has been sent by the one to the other, if such notice has not in fact been received by the other. The case, the facts of which are too well-known to require repetition here, is also the authority for this further proposition. Where the articles of a company incorporated under the Companies Act, 1908, give to the board of directors the power of appointing an additional director, and owing to differences between the directors no board meeting can be held for the purpose, the company retains the power of appointing additional directors in general meeting. In the later case of *Re Copal Varnish Company* [1917] 2 Ch. 349, where the articles of the company required the consent of the directors to the registration of transfers, it was held that one director could not wilfully abstain from attending board meetings in order to prevent the transfers being registered by reason of there being no quorum without his presence. The court held that the transferees were in the circumstances entitled to an order directing the company to register the transfers.

The articles usually provide for the election of a chairman of the board. He is generally, in the absence of special circumstances, elected by the directors, and holds office for as long as they determine. If the chairman elected happens to be a permanent director, his appointment as chairman does not mean that he holds that office as long as he is a director: *Foster* v. *Foster* [1916] 1 Ch. 532.

Turning now to the duties and rights of directors, we have already seen that the conduct of the company's business is entrusted to its board of directors by an article in some form similar to that of Art. 67 of Table A. A director as such may be an agent for the company, a trustee for the company, or, if he himself holds shares in the company, he is in the position of a managing partner. Though each of these descriptions is applicable to a director, they are to some extent all equally so, and they are really only useful when one comes to consider what the duties of a director are. First of all what is the status of a director *qua* the company? Again there is at first sight a conflict of opinion on the subject. One authority has it that directors are in the position not of servants, but of managers of the company. So far as the shareholders are concerned it is generally accepted that directors are in a qualified sense trustees for them. But as James, L.J., pointed out in *Smith* v. *Anderson*, 15 Ch. D. 247, at p. 275, there is an essential difference between a director and a trustee. A trustee is the owner of property and deals with it as principal or master, subject to an equitable obligation to account to his *cestui que* trust. The same individual may fill the office of director and also be a trustee having property, but it is a casual occurrence. He described the office of director as that of a paid servant of the company. The position of a director is put by Jessel, M.R., with his usual clarity in the case of *Re Forest of Dean Coal Company* 10 Ch. D. 450. He says this: "Directors have sometimes been called trustees, or commercial trustees, and sometimes they have been called managing partners, it does not matter much what you call them so long as you understand what their true position is, which is that they are really commercial men managing a trading concern for the benefit of themselves and all the other shareholders in it. They are bound, no doubt, to use reasonable diligence having regard to their position . . . and to act honestly."

(To be continued.)

Mr. Percy Holker Jordan, retired solicitor, of Pyrford, Surrey, left estate of the gross value of £14,404, with net personalty £10,979. He left £100 to his cashier and friend, Tom Headon, as a slight acknowledgment of his long and faithful service.

A Conveyancer's Diary.

Advertisements for Claimants by Personal Representatives or Trustees.

In our issue last week there appeared a contributed article headed "Distributable Shares of Missing Beneficiaries." I am afraid that I cannot agree with our learned contributor either on the facts as I gather that he submits them or with the advice which he gives.

Our contributor's point, as I understand it, is that s. 27 of the T.A., 1925, affords an ample protection to personal representatives and trustees who advertise in accordance with it, and that advantage is not in many cases taken of it and unnecessary applications to the court result.

I do not agree with him.

The subject has been discussed before in this column (vol. 76, p. 354), but as the article to which I have referred raises it again, I may take the opportunity of expressing my views once more.

It will be best, in the first place, to show just what s. 27 enacts—

> "(1) With a view to the conveyance to or distribution among the persons entitled to any real or personal property, the trustees of a settlement or of a disposition on trust for sale or personal representatives, may give notice by advertisement in the *Gazette* and in a newspaper circulating in the district in which the land is situated and such other like notices, including notices elsewhere than in England and Wales, as would, in any special case, have been directed by a court of competent jurisdiction in an action for administration of their intention to make such conveyance or distribution as aforesaid and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice or when more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates."

Then by sub-s. (2) it is provided that at the expiration of the notice, the trustees or personal representatives may convey or distribute the property "to or among the persons entitled thereto having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice," and shall not be responsible to persons of whose claims they had no notice. It is, however, added, that nothing in the section shall prejudice the right of any person to follow the property or free the trustees or personal representatives from the obligation to make the usual searches.

In an unreported case before Eve, J., last year, a distinguished leading counsel described this section as "a trap," and the learned judge seems to have agreed with him. I fear that our learned contributor has fallen into it.

In my former article on the subject I said that the section was "a snare for the unwary," and I still think so.

In the first place with regard to the facts, I think that it is the almost invariable practice of solicitors acting for personal representatives to insert advertisements in the "Gazette" and other papers which they think in the circumstances are sufficient. So far, at any rate, as executors and administrators are concerned, I do not agree that advantage is not taken of the section. As regards trustees, it is perhaps not so commonly done. But I cannot agree with our learned contributor that "one sees in the daily newspapers advertisements of applications by trustees to the court by way of originating summons that missing persons shall be presumed to be dead." Applications to presume the death of a person are, of course, common enough in the Probate Division for the purpose of obtaining a grant of probate or letters of administration, but s. 27 of the T.A., 1925, affords no help for that purpose. The person applying for a grant cannot depose to the death of the testator or intestate and must therefore ask the court to presume it.

Now, turning to the section, see what a responsibility the personal representatives or trustees have to take upon themselves. They must decide whether the case is a "special case" (whatever that may mean) and they must also decide what advertisements in the circumstances of the "special case" the court would have directed in an administration action.

I do not know how they are to decide either of those questions.

In my previous article I stated an actual case, and I do not know that I could imagine a better one. However, let us suppose that a personal representative is faced with the position that he has issued advertisements which he considers to be sufficient. He has, however, notice, although not "formal," that there may be some claim by a person who, let us say, has left the country many years ago and has not since been heard of. The personal representative then applies to the court on an originating summons, not to presume the death of the person who has disappeared, but for directions as to how the estate should be distributed. It might be that the court would direct the payment into court of the share which might be that of the missing beneficiary, or the court might order the distribution of the funds on the footing that the missing beneficiary could have no claim. I do not, however, remember, in the course of a long experience, ever meeting with a case where under an originating summons in the Chancery Division the court was asked to presume the death of a person, and certainly I have never seen any advertisement to that effect.

What happens in practice is that personal representatives invariably (where they consult a solicitor) advertise for claimants. Then, if there are no replies except from creditors and they have reason to think that it may be that there are persons entitled who have not answered the advertisements, they apply to the court. The mere fact that advertisements appear, as our contributor says, in the daily newspapers calling for claimants shows that the court has not considered that the advertisements already issued by the personal representatives or trustees are adequate to meet the "special case."

I must say that I cannot understand how any counsel could advise personal representatives or trustees to rely upon s. 27 of the T.A., 1925, except insofar as creditors are concerned and even then without hesitation.

Landlord and Tenant Notebook.

Specific Performance of Tenant's Repairing Covenant.

It is, I think, a long time since anyone tried get to a decree ordering specific performance of a broken covenant to repair. In the case of a tenant's covenant, I believe the attempt has never been made. The reasons are probably twofold. In the first place forfeiture, or the threat of forfeiture, has probably been the better remedy. In the second place, the authorities and textbooks strongly discourage the attempt.

But now that many properties are let at rentals which they would not yield if vacated, it is worth examining the question whether specific performance could not be ordered in lieu of or in addition to damages.

There is this to be said for the authorities; they are few but definite. Indeed, we could be very happy about it if they were also unanimous as regards *ratio* or if any one of them concerned a case in which an ordinary breach of an ordinary repairing covenant had been before the court.

The cases usually referred to commence with *London (City of)* v. *Nash* (1747), 3 Atk. 512, and *Lucas* v. *Commerford* (1790), 1 Ves. 235. The one related to a covenant to "new-build," the other to a covenant to "rebuild," expressions which may be taken to be synonymous, but not the equivalent of "repair." In the one Lord Hardwicke said specific performance could clearly be granted of a covenant to build, but not of a covenant to repair, for to build was "one entire single

thing," and the security of the lessors was to be considered. This authority was cited to Lord Thurlow in *Lucas* v. *Commerford*, who somewhat brusquely said he was "not inclined to follow that precedent of building a house under the direction of the court any more than a repairing one."

It may be said that the two Chancellors were unanimous as to general repairing covenants, but it is important to observe that their remarks were *obiter*, and that in each case the objection was what is usually called the difficulty of supervision.

Next, certain observations made by Lord Eldon, when dealing with a claim for relief against forfeiture for non-repair in *Hill* v. *Barclay* (1810), 16 Ves. 402, are of interest. Contrasting the position of a lessor with that of a landlord enforcing a proviso for re-entry for non-payment of rent, the learned Lord Chancellor said the latter "may bring an ejectment upon non-payment of rent; but he may also compel the tenant to pay the rent. He cannot have that specific relief with regard to repairs. He may bring an action for damages, but there is a wide distinction between damages and the actual expenditure upon repairs, specifically done. Even after damages recovered the landlord cannot compel the tenant to repair; but he may bring another action." Here no reason is indicated.

One could multiply examples showing that the courts of equity have, in the past, adopted different attitudes to the question of specific performance of a covenant to repair. Suffice it to say that among the numerous bars to that form of relief those raised in this case have included inability to supervise and adequacy of damages.

Now it can also be said that the question of specific performance of a repairing covenant has often been associated with that of specific performance of a building agreement. Indeed, the definition of "repair" given by Buckley, L.J., in *Lurcott* v. *Wakely* [1911] 1 K.B. 905, C.A., which I cited a few weeks ago (77 Sol. J. 652), namely, "restoration by renewal or replacement of subsidiary parts of a whole," emphasises the fact that the two questions have much in common, and it would seem to follow that if specific performance can be ordered of a covenant to build, the same relief can be given in the case of a covenant to repair.

Hence, while there have been no recent developments in the case of repairing covenants, any modern authorities on the question of building agreements are in point. And at the commencement of the present century the position in this regard may be said to have been defined by *Wolverhampton Corporation* v. *Emmons* [1901] 1 Q.B. 515, C.A. In his judgment Romer, L.J., laid down three conditions under which specific performance would be granted, namely, the work to be done must be defined by the agreement; damages must not afford an adequate remedy; and the grantee must have obtained possession of the land by virtue of the contract. The extent to which the work must be defined was subsequently discussed by Kekewich, J., in *Molyneux* v. *Richard* [1906] 1 Ch. 34, when he granted a decree ordering the erection of a specified number of houses, though the covenant merely specified that they were to be similar to certain houses in a neighbouring street, and though those houses varied slightly in point of size and accommodation.

Applying this principle to a repairing covenant, the chief stumbling-block will be the matter of defined work. I do not think that the inadequacy of damages can be urged; indeed, Lord Eldon's judgment in *Hill* v. *Barclay*, *supra*, shows how very inadequate a remedy damages may be, and that if a landlord does not wish to forfeit a lease, but wishes to preserve his property and his security, specific performance would be the proper remedy.

Now repairing covenants vary considerably, not only in point of stringency, but also as regards amount of detail. I would not recommend asking for specific performance of a covenant couched in general terms, at least not until the attitude of the courts has been tested by an action in which the remedy was sought in the case of either a covenant to repair on notice or a covenant from time to time to repair, with all necessary emendations, etc. In such a case the plaintiff would not be met with the objection that he was not asking for "one entire single thing," for he could specify what was to be replaced—or, adopting the wider definition of "repair" used by Du Parcq, J., in *Bishop* v. *Consolidated London Properties Ltd.* [1933] 102 L.J. K.B. 257, what was to be removed. The objection that the court will not order work it cannot superintend is, I think, closely akin to the objection against ordering the performance of a continuing duty; but it is not the same thing, and it has been considerably discounted since it was first raised. Indeed, in *Wolverhampton Corporation* v. *Emmons*, *supra*, A. L. Smith, M.R., made a remark which was very pertinent, if parenthetic, namely, that he could never see the force of the objection that the court could not superintend execution. And to conclude with what may be a useful hint for anyone experimenting on the lines I have suggested: in *Molyneux* v. *Richard*, *supra*, Kekewich, J., was much impressed by the fact that the plaintiffs, before starting proceedings, had sent the defendant a plan of the houses required, showing how the work could be done; and in the action they called as a witness a builder who deposed that he could do it. This combination of expert and "practical man" is often very effective.

Our County Court Letter.

DAMAGE BY WATER FROM UPPER FLOORS.

The principle of *Bishop* v. *Consolidated London Properties Ltd.* (1933), 148 L.T. 407, was recently followed at Leeds County Court in *Dilley* v. *Shaftesbury Cinema Ltd.* The plaintiff's case was that (1) she carried on business as a ladies' outfitter upon premises leased from the defendants; (2) on the 11th July, 1932, her stock was damaged by the leakage of water (through the ceiling of her shop) from the cinema on the next floor above; (3) the defendants, as landlords, were under an absolute duty (towards their tenants) to prevent the retained portion of their premises from being a source of damage or danger. The defence was that there was no proof of any negligence, apart from which the landlords were not liable. His Honour Judge Woodcock, K.C., observed that there was evidence of a crack in the ceiling, through which water had percolated, prior to the date of the damage giving rise to the action. It was held, that (*a*) if a landlord permitted a defect to remain, after notice, he did so at his own risk; (*b*) if the water might have been prevented from escaping, but nevertheless did so, the landlord was liable for the ensuing damage. Judgment was therefore given for the plaintiff, with costs. It is to be noted that, in the first-named case, *supra*, the claim was based upon breach of covenant, but Mr. Justice du Parcq stated that he would have been prepared to hold the defendants liable in tort, as they were bound to take reasonable precautions to prevent an escape of water to adjacent premises. Compare also *Cunard* v. *Antifyre Ltd.* [1933] 1 K.B. 551, in which the damage was caused by the fall of a piece of defective guttering.

EXTRA-TERRITORIALITY AND WORKMEN'S COMPENSATION.

The above subject was recently considered at Lincoln County Court in *Griffiths* v. *Gibson*, in which an application was made for the suspension of an award, on the following grounds: (1) the respondent had been injured in 1925 (while a nurse) and had since worked as a shorthand-typist at reduced wages; (2) she had therefore been in receipt of 10s. a week as compensation, but had recently married, and was about to take up residence in Port Sudan with her husband; (3) by reason of her impending withdrawal from the labour market, the award

should be suspended—until such time as she might desire to re-enter the industrial field. The respondent's case was that it was entirely novel to suggest that an abandonment of intention to work was a reason for suspending compensation—a principle which was contrary to the accepted administration of the Act. His Honour Judge Langman observed that the applicant could only allege a change in the respondent's intention, as opposed to a change in her capacity to work. Whatever the respondent's intentions might be, her physical incapacity was still partial, but—in view of her recent earnings—the weekly amount was ordered to be reduced from 10s. to 8s. As the application to terminate or suspend had failed, the respondent was allowed costs. It is to be noted that the respondent admittedly had no intention of working—even in Port Sudan. The Workmen's Compensation Act, 1925, is therefore extra-territorial in its application, once the award is made. If the actual accident occurs outside the United Kingdom, however, compensation can only be recovered by seamen (under s. 35) or by the crews of aircraft (under s. 36.) As the above respondent's intended absence was temporary (viz. two years), she was not disqualified by "ceasing to reside in the United Kingdom" within the meaning of s. 16. The latter only refers to permanent absence, as laid down in *Harrison Limited* v. *Dowling* [1915] 3 K.B. 218.

The above case illustrates the distinction between Workmen's Compensation and Unemployment Insurance benefit. Under the Acts regulating the latter "abandonment of insurable employment" has always been a disqualification.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Re Rent Restrictions Act, 1933. *Re* Landlord and Tenant Act, 1927.

Sir,—With reference to your interesting article appearing in your issue of the 14th inst., it is of importance to note that in the Court of Appeal in the case of *Simpson* v. *Charrington & Co. Ltd.*, reported in *The Times* of the 31st inst., Lord Justice Scrutton states as follows:—

"By sub-s. (6) of the same section, i.e., s. 1, of the Rent Restrictions Act, 1933, it gave to *all statutory tenants* whose tenancy was then determined by decontrol, the rights which they would have had under the Landlord and Tenant Act, 1927, as if they had had a lease."

It will be noted that the learned judge only gives such decontrolled tenants the rights they would have had under the Landlord and Tenant Act, 1927, as if they had had a lease, and it is suggested that by this he only treats this section as applying to decontrolled business-residential premises, and not decontrolled residential premises alone.

We shall be glad to hear what views your readers place on this *dictum* of the learned judge.

Bedford-row, W.C.1. WARREN & WARREN.
31st October.

Solicitors Act, 1933.

Sir,—Your correspondent, Mr. Barry O'Brien, seems very angry with me, apparently because he has taken the remarks in my letter published in your issue of the 21st October as having been directed to him, whereas they were, of course, *à propos* Mr. Johnson's letter in your issue of the 7th October.

I am sure you will acquit me of any intention of being offensive, certainly of being "unnecessarily offensive." I think it is accepted that if that which it is necessary to say in the public interest may be regarded by individuals as offensive to them, it should not merely on that account be left unsaid.

Mr. Nevil Smart had the courage at the Oxford Meeting to state the fact, unpalatable to some, that the cases of defalcation are almost entirely confined to the one-man practitioner, and he suggested the logical corollary.

Mr. O'Brien and Mr. Johnson seem to be at pains to establish that they and other solicitors who practise alone do so for reasons that are other than dishonest, but neither Mr. Smart nor I have suggested that all lone practitioners are scoundrels or even potential scoundrels, the only point sought to be made being that the scoundrels almost invariably practise alone, and therefore that avenue might reasonably be closed to them.

I am sure Mr. O'Brien has no intention of being unnecessarily offensive either to Mr. Smart or to myself in his suggestion that we have partners because we require the daily assistance of others, and because, through lack of confidence, inexperience or some other reason, we are unfitted to practise except in partnership.

That little pleasantry is as entertaining as Mr. Johnson's merry quip that Mr. Smart keeps partners, apparently like coalminers keep canaries, to protect himself from the ever-present menace of his own moral weakness.

I wonder whether the reason why so many one-man practitioners put the fictitious phrase "& Co." after their name is to suggest to their clients that they enjoy the advantage of having partners.

The issue is now joined, I think.

Bedford-row, W.C.1. G. W. FISHER.
30th October.

Sir,—I have read with much interest the correspondence on this subject, and, having heard the speech of Mr. Barry O'Brien at Oxford, I can only say that it was the ablest and almost the only practical comment upon the very diplomatic Paper read by Mr. Nevil Smart on the thorny subject of the Act and Rules.

As regards the question of partners and sole practitioners, Mr. Smart received Mr. O'Brien's remarks in the best possible spirit, and Mr. O'Brien is fully entitled to make the protest he does in his letter of 25th instant.

I can only add that in my opinion the issue raised by Mr. G. W. Fisher in his letter of 12th instant as to whether "the public interest is paramount, or the whole wretched thing is mere eye-wash," is a very dangerous one to put forward.

Greenwich, S.E.10. SUBSCRIBER.
30th October.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Lord Justice Knight Bruce began his legal career as articled clerk to a solicitor in Lincoln's Inn Fields. In 1812, however, he passed through the gateway into the precincts sacred to the Chancery Bar and became a member of Lincoln's Inn, where he attained his call five years later. He became a Bencher in 1829 and took silk in the same year. It was he who inaugurated one of the major changes in the aspect of the Inn, when, as Treasurer, he laid the foundation stone of the new hall and library in 1843. He was destined also to launch two important judicial innovations. When the equity jurisdiction of the Court of Exchequer was transferred to the Court of Chancery in 1841, he was one of the two new Vice-Chancellors created to deal with the additional business, and when the Court of Appeal was instituted in 1851, he was one of its first members. His judgments were terse, lucid and often witty. He was a profound lawyer, but impatient of time-wasting technicalities, and in some of his judgments which were reversed he anticipated reforms which were subsequently effected. He died on the 7th November, 1866, a fortnight after failing eyesight had forced his resignation.

Uproar in Court.

Whatever conjunction of stars makes for pandemonium in terrestrial law courts, its influence seems to be exceptionally potent at the present moment. Leipsig is still in eruption. Hawke, J., in lesser degree has witnessed a number of explosions in King's Bench, Court 8, and at Aix-en-Provence the "vitriol bath" case has produced a good deal of verbal vitriol. Peculiarly exhilarating was the conduct of the counsel for the defence when, the public prosecutor having told one of their number that it was a pity he was at the Bar, they marched out of court in a body, led by Maître Moro-Giafferi, as a protest against the insult to their Order. There is a splendid tradition of self-reliance about the French Bar, voiced by the great advocate Berryer when he said: "The independence of the Bar is a bulwark for each citizen against the rage and violence of authority." Lately, members of the Arras Bar refused to attend the inauguration of a monument to Robespierre because, though himself a lawyer, he had suppressed the Order of Advocates and deprived accused persons of the right to be defended. One of the greatest walking out scenes, nearer home, was the departure of the Irish Bar from the Evicted Tenants Commission, when Mathew, J., refused Carson the right of cross-examination. "The whole thing is a farce and a sham," said the Irish leader. "I will not prostitute my position by remaining longer as an advocate before an English judge." "I am not sitting as a judge," said Mathew. "Any fool could see that," was Carson's parting retort.

Private Oaths.

If you search the Scriptures you can find almost anything. A defendant at Raphoe District Court in Donegal recently refused to take the oath, saying that "according to the Scriptures you are not supposed to take an oath at all." When pressed by the judge to say where he had found this comprehensive prohibition, he replied: "I found it in the instructions of St. Paul." This answer recalls the anecdote related to the House of Lords by Erskine during Queen Caroline's trial: "My Lords, when I was counsel in a cause tried in the Court of King's Bench, an important witness called against me, without describing himself to be of any particular sect so as to be entitled to indulgence, stated that from certain ideas in his own mind, he could not swear according to the usual form of the oath; that he would hold up his hand and swear, but that he would not kiss the book . . . He gave a reason which seemed to me a very absurd one: 'Because it is written in the Revelation that the angel standing on the sea held up his hand.' I said: 'This does not apply to your case, for in the first place you are not an angel; secondly, you cannot tell how the angel would have sworn if he had stood on dry ground as you do.' Lord Kenyon sent into the Common Pleas to consult Lord Chief Justice Eyre," and, to end the story briefly, the witness was sworn as he wished and his evidence lost the case for Erskine.

Reviews.

Introduction to the Law of Scotland. Second Edition, 1933. By William Murray Gloag, K.C., LL.D., and Robert Candlish Henderson, K.C., LL.B., Royal 8vo. pp. xlix, and (with Index) 663. Edinburgh: W. Green & Son, Ltd. 42s. net.

The fact that a second edition of this substantial work has been so soon called for is not surprising, and is of itself striking testimony to its value. Till the learned authors prepared this "Introduction," students of Scots law were nurtured on successive editions of Erskine's "Principles," which, excellent though it was from the historical standpoint, had become edited out of all recognition, offering a conspicuous instance of the unwisdom of pouring new wine into old bottles. On the welcome appearance of the first edition of Professors Gloag and Henderson's volume, the labours of the student were immensely lightened, for he was provided with a text book which it was a pleasure to handle and to read. In the present edition the learned authors have made no drastic alterations—none such were required—but they have carefully noted the effect of recent legislation and of the relevant decisions. As on many of the subjects treated the law of Scotland is substantially the same as that of England, the volume may profitably be consulted by the English practitioner who in doing so may well think that on one or two points Scots law is more effective in doing justice than is ours. For example, in Scotland a person under age is not permitted on that ground to escape liability on his contract if he has held himself out as of full age, and has, on reasonable grounds, been believed to be so by the other contracting party, while in England it has been decided by the Court of Appeal in *Leslie* v. *Shiell* [1914] 3 K.B. 607, that the plea of infancy in such circumstances is a good answer to an action *ex contractu*. The subject of "reparation," the equivalent in Scots terminology to "torts" in English law, will specially repay study by English readers. Here again there are points of difference. For example, in the law relating to defamation it appears that by Scots law, in this respect different from our law, an action for injury to feelings caused by a defamatory statement, verbal or written, lies even though the statement has not been communicated to a third party. Considerations of space preclude specific reference to other sections of the work, but we may call attention to an admirable feature from the student's point of view, namely, the prefixing to many of the chapters of a list of standard treatises in which the particular subject matter is more fully developed. So far as we have been able to test it the work is surprisingly free from errors, typographical or other; we have however noted one or two. Among these are the misspelling of the name of Lord Justice Clerk Moncreiff and of that of Chief Justice Erle. In a footnote on p. 63 we find "Blackburn, L.J.," mentioned, but it should be known that the distinguished judge to whom reference is thus made, after being Mr. Justice Blackburn, became Lord Blackburn; he was never Lord Justice Blackburn. In the same footnote in which this occurs, the reference to the case of *Smith* v. *Hughes* is also incorrectly given. Slips such as these are, however, not likely to disturb the student's appreciation of a most excellent work.

Books Received.

London Prisons of To-day and Yesterday. By Albert Crew, of Gray's Inn, the Middle Temple, the Central Criminal Court, and the South-Eastern Circuit, Barrister-at-law. 1933. Demy 8vo. pp. viii and (with Index) 268. London: Ivor Nicholson & Watson, Limited. 10s. 6d. net.

Porter's Laws of Insurance. Eighth Edition. 1933. By T. W. Morgan, of Gray's Inn and the Oxford Circuit, Barrister-at-law. Demy 8vo. pp. xxxvii and (with Index) 567. London: Sweet & Maxwell, Limited. £1 12s. 6d. net.

A Treatise on the Law of Income Tax. By E. M. Konstam, one of His Majesty's Counsel, a Judge of County Courts. Sixth Edition. 1933. Royal 8vo. pp. lxxix and (with Index) 720. London: Stevens & Sons, Limited; Sweet & Maxwell, Limited. 42s. net.

Bankruptcy, 1932. Fiftieth General Annual Report by the Board of Trade. 1933. London: H.M. Stationery Office. 9d. net; postage extra.

The Solicitors' Diary, Almanac and Legal Directory, 1934. Edited by R. W. D. Sandford, B.A., Solicitor. Ninetieth Year of Publication. 1933. London: Waterlow & Sons, Limited. Cloth, 8s. net; Half Calf, 10s. to 12s. 6d. net.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Deduction of Tax—Liability to Account to Revenue where not made.

Q. 2847. Can you refer us to any authority covering the following point: Where, under the provisions of the Income Tax Acts, a person is entitled to deduct tax from a payment of interest due to another and such deduction is not made, can the payer under any circumstances be made liable to account to the revenue for the tax applicable to the payment in question on the ground that the revenue lose the benefit of taxation at source through the failure of the payer to deduct tax or on any other ground?

A. The following quotation from a work by an ex-official of the Inland Revenue shows, we think, the revenue reading of the law: "It should be noted . . . that if the payer neglects to make the deduction he has no remedy as far as the revenue is concerned. Moreover, recovery of the tax at law" (from the payee) "is very problematical." Section 211 of Income Tax Act, 1918, as amended by Finance Act No. 2, 1931, seems to imply that in cases where there is no alteration of rate the payer cannot subsequently recover from the payee and that non-deduction does not affect the liability of the payer to assessment. We believe as a matter of practice where interest has not been deducted the payee frequently advises the inspector and tax is accepted from him.

Principal and Agent—Offer secured subject to Contract—Whether Agent entitled to Remuneration.

Q. 2848. A instructs B, an estate agent, to find a purchaser as quickly as possible for her house at £825. B submits to A an offer he has received from C of £725. A writes B—"re your offer for my house I have decided to accept it for a quick sale." C pays B a deposit of which B acknowledges receipt as stakeholder and agent, "subject to formal contract." Before the formal contract is prepared A withdraws from the sale, having received a better offer from another source. C is able and willing to complete. Has B any claim for remuneration? If he has, can he claim commission on the recognised scale, or only for the value of services rendered by him? Please state authorities.

A. This case seems to come within the decision of the Divisional Court in *Raymond* v. *Wooten* (1931), 75 Sol. J. 645, and the opinion is given that B has no claim at all.

Auctioneer's Unsound Advice.

Q. 2849. Various properties are advertised for sale by auction, and A, who desires to find an investment for his daughter, interviews the auctioneer (of whom he is an old client) prior to the sale. After informing the auctioneer of his requirements he is told that the houses forming one lot in the sale have all the characteristics of slum property, but that a block of property in Blank-street would be a good bargain for him. Acting on this advice and without inspecting the property A attended the sale and bought the property in Blank-street for a fairly high figure, which was considerably more than the vendor's reserve price. In order to complete the purchase, A applies to several building societies for loans, but they refuse to make any advance, their valuers affirming that the property in Blank-street has all the characteristics of slum property and may be condemned. The auctioneer now says that he did not see the property "with a valuer's eye," but, apparently, does not disagree with the opinions of the building society valuers. It is anticipated that the vendors will take proceedings to enforce completion, and we shall be pleased if you can point to any cases which might be authority for the presumption that A has a good defence by reason of misrepresentation on the part of the auctioneer in his capacity as agent for the vendors. Although A made no payment to the auctioneer for his advice, can it not be said that the auctioneer owed a duty the breach of which entitles A to damages?

A. We are afraid A has no remedy. We are clearly of opinion that the auctioneer had not implied authority from the vendor, whose property was offered according to particulars and conditions of sale, to make the vendor liable for his statement to A. With regard to the possibility of A having a remedy against the auctioneer, it is clear there is no remedy in contract, as there was no contract. In the old case of *Donaldson* v. *Haldane* (1837), 7 Cl. & Fin., it was held that a solicitor was liable to a mortgagee for an insufficient security though he made no charge against him, but only against the mortgagor. The circumstances were somewhat special in that the solicitor definitely accepted a retainer from the mortgagee to act for him. A surgeon who is employed even gratuitously to perform an operation is bound to exercise skill, and will be liable, at any rate, for gross negligence. In the case put, however, we cannot think that the mere casual opinion of the auctioneer that a block of property would be a good bargain would be sufficient to entitle A to claim damages, though we cannot cite any authority on the point.

Option to Take Further Term—Continuance in Possession at Increased Rent.

Q. 2850. A offered by letter to let premises to B for three years at a rent of £z for the first year, £y for the second year, and £z for the third year, with an option for a further two years at £z per annum. Nothing was stated as to how the option was to be exercised. This offer was accepted in writing. At the end of the third year B remained in possession and paid rent at the rate of £z per annum. Is B in possession as having exercised his option or as a yearly tenant, and accordingly able to determine the tenancy on giving six months' notice of intention to quit?

A. This case, undoubtedly, presents some difficulty. A contract for an extended term is within s. 40 of L.P.A., 1925 (*Beatson* v. *Nicholson* (1842), 6 Jur. 620), but the memorandum need only be signed by the person to be charged, providing there is in fact an acceptance by the other party. On the authority of *Nunn* v. *Fabian* (1866), L.R. 1 Ch. 35, and *Miller and Aldworth* v. *Sharp* [1899] 1 Ch. 622, the remaining in possession by B plus the payment of increased rent may be considered as an act of part performance which would prevent A treating B's tenancy as a yearly one. In questions of part performance, however, it is the act of the plaintiff and not the act of the defendant that has to be considered (see *Rawlinson* v. *Ames* [1925] Ch. 96), i.e., the plaintiff cannot set up the defendant's act of part performance in reply to a plea of the statute. The opinion is given, therefore, that unless the original letter of acceptance by B was worded so as to be an acceptance both of the original and the additional term of two years, B may regard himself as a yearly tenant, as if A sets up the contrary contention, s. 40 may be pleaded. There is, however, no direct authority as far as is known.

Notes of Cases.

Probate, Divorce and Admiralty Division.

Hogton *v.* Hogton.

Sir Boyd Merriman, P., and Bateson, J. 2nd October, 1933.

HUSBAND AND WIFE—MAINTENANCE ORDER ON GROUND OF DESERTION—ONUS OF PROOF OF MARRIAGE—CEREMONY WITHIN SEVEN YEARS OF PREVIOUS HUSBAND'S DISAPPEARANCE—PRESUMPTION OF DEATH OF PREVIOUS HUSBAND—EVIDENCE—CIRCUMSTANCES TO BE TAKEN INTO ACCOUNT TO DATE OF SUMMONS—*Deakin* v. *Deakin*, 33 J.P. 805, FOLLOWED—*Ivett* v. *Ivett*, 94 J.P. 237, DISTINGUISHED.

This was the husband's appeal from an order of the Hyde (Cheshire) Justices, dated 13th July, 1933, directing him to pay the sum of £1 per week by way of maintenance, on the ground of desertion.

The parties were married on 3rd October, 1910. According to the wife's evidence, in 1897 she had married a man named Newell. In 1903 she was granted a separation order against him at Bradford. In 1904 Newell went to Canada and the wife had heard or seen nothing of him since. In 1905 and 1906 the wife had expended upwards of £50 on inquiries in Canada as to his whereabouts. In 1909 Newell's mother died leaving him money under her will. His relations tried to trace him without result. In 1932 the husband became associated with another woman and finally left the wife in March of that year. According to the husband's evidence, he only heard of the circumstances in regard to his wife's former marriage three years after he was married to her. He had heard of Newell being alive in 1930. The grounds of appeal were that there was no evidence that the form of marriage on 3rd October, 1910, was otherwise than invalid and bigamous; and that the magistrates were wrong in law in holding that the burden was on the husband to prove that the marriage in 1897 was a subsisting marriage and that Newell was alive in 1930. Counsel on behalf of the appellant husband tendered fresh affidavit evidence, admitted by consent, purporting to show that Newell might have been alive in October, 1910. He submitted that in a similar case, *Ivett* v. *Ivett*, 94 J.P. 237, a maintenance order had been discharged on appeal because the magistrates had wrongly held that the onus was on the husband to prove that his wife's former husband was alive. In that case Mr. Justice Hill had adopted the law as to presumption of life if a missing person had been heard of within seven years of his disappearance, as stated in "Stephen's Digest," Art. 99. In the present case the period was six years at most before October, 1910, and the magistrates were wrong in placing the onus of proof on the husband. Counsel for the respondent wife referred to *Deakin* v. *Deakin*, 33 J.P. 805, and submitted that that case clearly showed that the bench was entitled to take into account the long period of time which had now elapsed since Newell was last heard of. The magistrates had placed the onus on neither husband nor wife, but merely interpreted the law properly in the light of the facts. In *Ivett* v. *Ivett*, *supra*, the magistrates had misapplied the law in the light of facts which actually showed that the former husband was alive within the seven years' period.

Sir BOYD MERRIMAN, P., in giving judgment said that of course a necessary element in the right to make the order appealed against was that the woman was the wife of the appellant. Was she free to marry the appellant in 1910? It was common ground that she had previously married another man, that he had disappeared in 1904 after she had obtained a separation order against him, and that he had never been heard of since. It was suggested that the justices had misdirected themselves on the ground that they put the onus on the husband to prove that Newell was still alive. He, his lordship, did not take that view of their decision. On the facts before them they decided that at the relevant date the previous husband was dead. Was there evidence on which they could so decide? There was no further evidence of death than the absence of the previous husband for six years immediately preceding the marriage in 1910 except one very significant thing, that Newell's mother had died in 1909 and efforts had been made to trace him and had failed. It was said that the justices were limited to considering the position as it stood in 1910. He, his lordship, did not agree with that proposition, and *Deakin* v. *Deakin*, *supra*, was against it. Speaking for himself, he thought that there was abundant evidence entitling the parties to presume that the previous husband was already dead in 1910. It was said that *Deakin's Case* had been over-ruled by *Ivett* v. *Ivett*, *supra*, but the latter was a decision upon the particular facts of the case. There the justices had made, as to the onus of proof, an artificial presumption that had not been justified. He was not impressed by the further affidavit evidence purporting to prove facts from which it might be inferred that Newell was heard of alive in 1911. The appeal would be dismissed with costs.

BATESON, J., concurred.

COUNSEL: *N. D. Bailey*, for the appellant; *Emlyn Jones*, for the respondent.

SOLICITORS: *J. D. Arthur & Co.*, for *A. H. W. Wragg*, Manchester; *Haslam & Sanders*, for *H. Bostock & Son*, Hyde.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

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AUTUMN ASSIZES.

The following days and places have been fixed for holding the Autumn Assizes, 1933:—

WESTERN CIRCUIT (2nd Portion).—Avory and Du Parcq, JJ.—Tuesday, 14th November, at Bristol; Thursday, 23rd November, at Winchester.

SOUTH-EASTERN CIRCUIT (2nd Portion).—The Lord Chief Justice.—Thursday, 16th November, at Hertford; Tuesday, 21st November, at Maidstone; Saturday, 2nd December, at Kingston; Wednesday, 6th December, at Lewes.

SOUTH WALES CIRCUIT.—MacKinnon, J.—Monday, 6th November, at Carmarthen. Avory and MacKinnon, JJ.—Thursday, 9th November, at Cardiff.

An order under s. 77 of the Supreme Court of Judicature (Consolidation) Act, 1925, has been made directing that the business, if any, which would have been transacted at Brecon is to be transacted at Cardiff.

Obituary.

SIR JOHN DICKINSON.

Sir John Dickinson, formerly Chief Metropolitan Police Magistrate at Bow Street, died at his home at Worplesdon Hill on Sunday, 29th October, at the age of eighty-four. Educated at Cheltenham and Trinity College, Cambridge, he was called to the Bar by the Inner Temple in 1871, and for many years practised on the Northern Circuit and at the Lancashire and Cumberland Sessions. He was Deputy Stipendiary Magistrate at Liverpool in 1888 and 1889. In 1890 he was appointed a Metropolitan police magistrate at Thames Police Court, and remained there until 1913, when he was promoted to the office of Chief Magistrate and received the honour of knighthood. He retired in 1920.

MR. P. H. CHETWYND.

Mr. Philip Henry Chetwynd, Barrister-at-Law, of Harcourt-buildings, Temple, died on Wednesday, 1st November, at the age of twenty-seven. Mr. Chetwynd, who was educated at New College, Oxford, was called to the Bar by the Inner Temple in 1930, and practised on the Midland Circuit and in London.

MR. C. G. BRIGGS.

Mr. Cecil Graham Briggs, solicitor, of Brentford, Isleworth and Ealing, died in a nursing home at Ealing on Friday, 27th October, at the age of fifty-one. Mr. Briggs was admitted a solicitor in 1916.

MR. S. R. DEW.

Mr. Samuel Richard Dew, solicitor, head of the firm of Messrs. S. R. Dew & Jones, of Bangor, died at his home at Upper Bangor on Monday, 30th October, in his eighty-first year. Mr. Dew, who was admitted a solicitor in 1876, was clerk to the magistrates for the first division of Anglesey.

MR. C. DUGGAN.

Mr. Clements Duggan, solicitor, of Bristol, died recently at Bristol. He was admitted a solicitor in 1928.

MR. F. S. RIX.

Mr. Frederic Shelley Rix, one of the oldest practising solicitors in the country, died at Beccles on Wednesday, 25th October, in his ninety-seventh year. Educated at the old Fauconberg School, Beccles, and having served his articles with his father, Mr. Rix was admitted a solicitor in 1857. He had practised in partnership with his son, Mr. Shelley William Rix, as Messrs. Rix & Son, since 1909. He held a number of public appointments, and was Clerk to the Guardians and Magistrates for over fifty years.

Societies.

The Law Society.

PRELIMINARY EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Preliminary Examination held on the 11th and 12th October: Thomas Norman Addison, John Frederick Beaty, Raphael Howard Boyers, Thomas Briggs, Bernard Dudley Cattermole, Desmond Henry Corkery, Paul Pattinson Danson, Samuel Saunders Watson Penry Davey, Alan Gwynne Davies, Lawrence Carlile Davis, Donald Ellis, Sydney Charles Field, Arthur Bernard Franklin, Eric Patrick Fullbrook, William Kenneth Hicks, Anthony Hobson, Maurice Edmund Holderness, Trafford Aldred Holford, Cecil Howett, Harry Gordon Hunt, Geoffrey Hippolyte Jacobs, Norris Richard Thomas Johnson, Harold Leiberman, Patrick James Danvers McCraith, John Stanley Mann, Guy Meredith Myles Mathews, Robert Alexander Mew, Philip Holme Mitchell, Samuel John Godfrey Gunthorpe Morgan-Morris, Gerard Elliot Moule, John Stanhope Payne, Lewis Roland Rees, Harold Frederick Rogers, Henry Harvey Saville, Cecil Edmund Robert John Sayer, Edward John Steward, Phyllis Evelyn Waller, Walter Grahame Wiggs, Andrew Wontner-Smith, Waid Archer Wood.

Number of Candidates, 137: passed, 40.

Referees (Landlord and Tenant Act, 1927) Association.

SIXTH ANNUAL GENERAL MEETING.

At the sixth annual general meeting of the Referees, (Landlord and Tenant Act, 1927) Association, held on the 17th October, Mr. S. P. J. Merlin presided as Chairman of the Association, and the following is a brief résumé of his opening observations:—

"The elucidation of the Landlord and Tenant Act, 1927" (he said) "has proceeded somewhat slowly during the last year and there are not so many cases to comment on as there were at previous meetings.

"The most important case reported during the year is probably that of *Simpson* v. *Charrington*, in which the Divisional Court decided, as you know, that 'the tenant of premises where the sale of intoxicating liquor was the sole trade carried on was not entitled to compensation under s. 4.' Mr. Justice Acton said he came to this conclusion 'not without doubt.' I may add that this case came before the Court of Appeal last week and after a hearing of about three days, judgment was reserved.

"On the other hand it was decided in another case, brought by a holder of an off-licence, that, where the tenant carried on an ancillary business, e.g., that of a provision dealer in conjunction with the off-licence business, the tenant was entitled to a new lease of the whole premises by virtue of the goodwill created, and attached thereto, by the provision business.

"A secondary point in the case of *Simpson* v. *Charrington* and that was, whether alternative claims for compensation under s. 4 and a new lease under s. 5 were concurrently permissible. The Divisional Court, however, refused to deal with this moot point until it became imperative, which it was not in that case. The learned county court judge had held that a notice containing alternative claims was not bad.

"Another feature in the legal history of the Act, during the past year, which demands mention is the Rent Restriction Act, 1933. So far as its provisions affect us, directly, they are contained in s. 1 (6), which enacts that the remedies of the Landlord and Tenant Act, 1927, shall be available to statutory tenants who have received notice to quit. A considerable number of cases have already been commenced under this new provision.

"One of the best-known authors on the Rent Acts has spoken to me about a difficulty which he thought would occur in these claims where a month's notice would be given by the landlord. He pointed out that under s. 1, sub-s. (6), the tenant could serve his notice of claim for a new lease at any time up to the last day of the month's notice; and he proceeded to say that the landlord then had a two months' period in which to elect what he would do as to admitting or contesting the claim. On these facts, he queried what the tenant was going to do meanwhile if he wanted a new lease. Was he to stay in for two months as a trespasser or go out and thus destroy his goodwill before his right to a new lease was decided by the tribunal?

"I have looked into the matter and I find that, although his difficulty would have been a real one under the old County Court Rule of Ord. 50B, r. 5 (4), it is now practicable (under the amended r. 5) for the tenant to commence his action forthwith, after serving his notice of claim, and then to make an application to the court (under s. 5, (13), to be allowed 'to continue in possession until his claim is decided.' But, in order to come within the wording of this sub-s. (13), I think the tenant should make his application before the expiration of his tenancy if possible.

"In a case which is now awaiting appeal, the learned county court judge refused to grant an extension of time to the tenant pending his appeal; but on the tenant appealing and then applying to the High Court for an extension, the landlord consented to an order which, I think, the tenant would have secured if the landlord had not done so.

"As the time allotted to this meeting is now expiring and no 'new lease' is possible, I will conclude by saying that our Honorary Secretary, Mr. L. G. H. Horton-Smith, who has done such valuable work for us, aided by the committee, will always be glad to assist every member of the Association in any way in the administration of this Act which, of course, we all desire to make as harmonious and uniform as possible, all over the country, in its results."

General discussion followed, whereafter the officers and other nine members of the committee for the ensuing year were elected as follows:—Chairman, Mr. S. P. J. Merlin, Barrister-at-Law; Hon. Secretary, Mr. L. G. H. Horton-Smith, Barrister-at-Law; Hon. Treasurer, Mr. Dendy Watney, P.P.S.I.

The other nine members of the committee :—Mr. S. Carlile Davis, Solicitor (Plymouth), Mr. J. A. K. Ferns Solicitor (Stockport), Mr. Edgar Foa, Barrister-at-Law, Mr. J. G. Head, F.S.I., Mr. L. S. Holmes, Solicitor (Liverpool), Mr. E. H. Leeder, F.S.I. (Swansea), Mr. G. C. R. Marshall, Solicitor, Mr. P. F. Tuckett, F.S.I., and Mr. J. A. Weir Johnston, Barrister-at-Law.

Solicitors' Managing Clerks' Association.

SCHEMES OF ARRANGEMENT.

At a meeting of this association held at Gray's Inn, on 27th October, Lord ATKIN took the chair and Mr. ANDREWES UTHWATT read a paper on this subject.

Without discussing the question at length, he wondered whether the motor-car or the limited liability company had been the worse product of the nineteenth century. A scheme of arrangement invariably brought home, with considerable circumlocution, to the creditor or shareholder the fact that he had lost his money or a considerable part of it. The typical arrangement with shareholders modified the rights of preference shareholders entitled to shares carrying a cumulative preferential dividend which had fallen into arrear. If there were a modifying rights clause in the articles it was not necessary to have a scheme of arrangement, but the court could disallow variation if it were satisfied that the interests of the class would be unfairly prejudiced. The practical question was what consideration was to be given to the preference shareholders. The articles usually required that the amount distributed in dividends should not exceed the amount recommended by the directors. The directors and the ordinary shareholders could usually control a meeting by their voting power, and could therefore, hold up any distribution unless the preference shareholders would agree to a concession. The terms were, as a rule, that the preference shareholders should forego their arrears with or without compensation and, sometimes, that preference dividends should have their rate reduced or be made non-cumulative. The line usually taken was to create income certificates for the amount of the preference dividend in arrear, payable at a future date out of profits and carrying interest at a low rate dependent on the profits of each year. Shareholders were sometimes asked to accept shares which carried a non-cumulative right to a preferential dividend.

Before 1900, companies used to frame their capital on the lines of preference shares, ordinary shares and deferred shares, usually of small nominal amount, carrying a handsome percentage of profit. The promoters usually reserved these last for themselves. Schemes of arrangement generally gave their holders paid-up ordinary shares of much larger nominal amount in exchange. This course was only possible if the company had undistributed profits or free reserves which it could capitalise against these ordinary shares.

Nowadays, Mr. Uthwatt remarked, it appeared to be common form to repudiate a debt whenever it was inconvenient to pay it, and there was practically no method of settling with creditors that companies had not put forward. Under a scheme of arrangement debts might be reduced, secured creditors might be converted into unsecured, and both might be compelled to take shares even though their debt was secured by a guarantee and that guarantee was released by the scheme. (*Shaw* v. *Royce* [1911] 1 Ch. 138.)

By the practice of the court, certain creditors' rights to payment in full were preserved ; the Crown's in respect of certain taxes, and clerks' and servants' in respect of certain wages. These creditors were protected by statute in a winding-up.

RECONSTRUCTION : PROXY.

By s. 154 of the Companies Act, continued Mr. Uthwatt, a company could, by leave of the court, reconstruct itself, a new company being formed to take over the assets and creditors. In appropriate cases exemption could be obtained from stamp duty and from capital duty. The first step was to take out an originating summons asking for directions as to meetings, supported by an affidavit setting out the scheme and giving particulars of what classes were affected, what meetings were to be held and what advertisements were necessary. There were no respondents. The Order directed dates of meetings, notices, advertisements, what proxies were to be used, and who was to be the chairman. In settling what classes were to be summoned the chief point was that those persons should be grouped together who had a common interest, such as shareholders holding shares of one kind, debenture-holders of the same issue, and unsecured creditors other than preferential creditors. A person belonging to more classes than one might vote in any class. The vote of a person in one class to assist his interests in another was good, but might afford a ground for the court rejecting a scheme passed by a majority with the help of those who had other interests to serve.

Since by the common law a man could vote at a meeting in person only, to justify voting under a proxy its terms must be complied with. The usual form of proxy required that it must be lodged a certain time before the meeting, that the proxy should be a member of the class, and that the form should be completely filled in so that the proxy was given no discretion. A point of real practical difficulty was raised by the words which laid down that the proxy should vote "for or against the scheme either with or without modification." The scheme being presented as a whole, a person who wished to vote against it as it stood, but was willing to approve it with some modification, could not give a proxy in accordance with his wishes.

The class meetings having been successful, a petition for sanction was filed, supported by evidence of the circumstances justifying the scheme, and by the chairman's report of the result of the meeting. The first duty of the court was to see that the statute had been obeyed and that the majority had been acting *bona fide*. The criterion was : is the scheme one which a reasonable man might have properly approved ? When the scheme had been sanctioned, the rights of all affected persons stood altered, not by their consent, but by virtue of the Order.

A colonial or foreign creditor could not be prevented by a scheme from obtaining judgment against the company in his own country, and if he could find assets he would have no difficulty in enforcing it.

Medico-Legal Society.

SOME MEDICO-LEGAL ASPECTS OF SHOCK.

Sir BERNARD SPILSBURY delivered his presidential address with this title at the first meeting of the autumn session of this Society on 25th October.

The sudden onset and sometimes sudden death, he said, often gave little opportunity for observing what happened. Shock was one of the most overworked and ill-used words in the medical vocabulary ; many of the deaths ascribed to it should be attributed to exhaustion, loss of blood, concussion or injury to the brain. True, shock was comparatively rare. In one variety of shock the chief feature was a marked fall of blood pressure developing gradually some hours after bodily injury, and some street accidents caused death in this way. War-time studies had shown that the progressive fall of blood-pressure was due to great dilation of the tiny blood-vessels. The crushed and injured tissues gradually produced certain substances (histamines) which caused these changes. This was the one form of shock of which a scientific explanation had been found. The explanation did not apply to any of the other forms.

Shock might appear immediately and kill almost at once, and most of these sudden forms of shock could not be produced experimentally in animals. Many theories had been put forward to explain them. Shock and instant death might result from attempts at criminal abortion. These cases seemed to have been unknown until about twenty years ago, but during that period Sir Bernard himself had studied nineteen cases. In twelve, death resulted from an operation by the woman herself ; in six, the operation was proved to have been done by another, five of the operators having been convicted. In thirteen, the death was caused by injection of soap solution ; in the others it was due to attempted passage of an instrument. The victims might be perfectly healthy people and show no appreciable injury. They showed, however, a noticeable but transitory lividity of the skin and congestion of all the internal organs. The fœtus in the womb was also livid.

Death was not associated with any serious pain. In one case it had resulted from the removal of an instrument inserted on the previous day. Both heart and respiration went on for some little time after the onset of shock, so death was not primarily due to respiratory or heart failure. Alarm and nervousness seemed to play no part. No chemical explanation would account for these rapidly fatal cases ; the only acceptable theory was some nervous mechanism producing profound changes as a result of the local stimulation of the neck of the womb. The only possible mechanism seemed to be a fall of blood pressure resulting from widespread dilation of the small blood vessels and starvation of the larger vessels. The regulating (vasomotor) apparatus was paralysed, and there seemed little hope of successful treatment, though immediate and severe compression of the abdomen and limbs might possibly return the blood to the heart. This kind of shock was not necessarily fatal ; milder attacks seemed to be not uncommon in abortions, and were seen in surgical operations on the neck of the womb.

Another very rare form of shock resulted from the entrance of a foreign body into the larynx (voice box). A perfectly

healthy child might die suddenly from getting a crumb or feather in the larynx. There was no lividity and little congestion—nothing, indeed, to suggest the mechanism. It must be a nervous reflex, since death was so sudden, and might be regarded as a perversion of the normal coughing reflex. Instead of merely stopping the breath, to prevent the foreign body from going into the lung, the stimulus might spread to other parts of the brain and inhibit vital functions.

A third type of shock was ascribed to sudden or unexpected immersion in water. The lungs of the corpse did not contain fluid, and death was not due to drowning. The cause was sudden passage of water up the nose; death of this kind was not caused by diving head first. Pearl divers clipped their noses before being lowered into the water. Some perversion of the normal sneezing reflex presumably inhibited vital functions.

The fourth type of death occasionally followed a blow in the upper abdomen. This was comparable with the first class as abdominal congestion and some lividity were seen. Local paralysis of the nerve centres in the belly might upset the mechanism regulating the blood vessels and cause a fall of blood pressure.

In all cases death was due to some perversion of a normal nervous reflex mechanism.

University of London Law Society.

A moot was held at London University, Gower-street, and presided over by Mr. Justice Maugham, on Tuesday, 24th October. Plaintiff's counsel were Miss Braune and Mr. Waters. Defendant's counsel were Mr. Betuel and Mr. Fustado. The facts were that a lawyer walking along a lane saw a farm lad trying to drive three pigs across a water splash. The lawyer volunteered to assist and thought he could achieve his end by opening and shutting his umbrella in the face of one of the pigs. Startled by this manœuvre the pig dodged back into the road and upset a beautiful film star. She suffered facial injuries in her fall, and brought an action against the lawyer claiming heavy damages. His Lordship giving judgment dismissing the action, with costs against plaintiff, said that the case was one which raised an allegation of tort. The law of tort could not be put into a nutshell. It might be defined as a breach of duty other than a contractual duty, but if they asked whether such a breach of duty could give rise for an action they were confronted with a large number of propositions going back to very early times. These were analysed and put in text-books. They must take reasonable care to do no act which, with the exercise of reasonable forethought, might have been foreseen to injure their neighbour, which definition meant any person who might be affected by their act. If the animals had been classified as "dangerous," such as a lion or tiger from a menagerie, he would not say that the lawyer would have been justified in lending a hand, but pigs were quasi-domestic animals and the lawyer was justified as a reasonable man in giving help for there was no scientific or particular way of driving pigs except using reasonable care.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room on Tuesday, 31st October (Chairman, Mr. R. Langley Mitchell), the subject for debate was: "That in the opinion of this House the police are above reproach." Mr. C. F. S. Spurrell opened in the affirmative. Mr. P. H. North Lewis opened in the negative. The following also spoke: Messrs. M. Foulis, A. L. Ungoed-Thomas, C. E. Lloyd, D. Jefferies, W. M. Pleadwell, Dr. Bang-Jensen, Messrs. K. M. Trenholme, J. R. Campbell Carter, C. J. de S. Root, and J. C. Christian Edwards. The opener having replied, the motion was lost by two votes.

United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room on 30th October. Mr. J. Halpin proposed "That in the opinion of this house the case of *Hall* v. *Brooklands Auto Racing Club* [1933] 1 K.B. 205, was wrongly decided." Mr. J. H. Vine Hall opposed. Miss Colwill and Messrs. Ball and Owens spoke, and Mr. Halpin replied. The motion was lost.

The Hardwicke Society.

An ordinary meeting of the Society was held in the Middle Temple Common Room, on Friday, 27th October. The President, Mr. L. Ungoed Thomas took the chair at 8 p.m. In public business, Mr. A. G. de Montmorentcy moved "That further disarmament is at present undesirable." Mr. A. H. Bray opposed. There spoke to the motion, Mr. Menzies, Mr. Walter Stewart, the Hon. Treasurer, Mr. Granville Sharp (ex-President), Mr. Hare, Mr. Baden-Fuller, Miss Willis, Mrs. Ungoed Thomas, Mr. Crowe (visitor), Mr. Howard, Mr. Parker, and the Hon. Proposer in reply. On a division, the motion was won by four votes.

The Gray's Inn Debating Society.

The next meeting of the Society will be held in the Common Room, Gray's Inn, at 8.15 p.m., on Thursday, 9th November, when a debate will take place on the motion: "That the passing of the present Bill for extending the grounds for divorce under English law is urgently necessary." This motion will be proposed by Mrs. M. L. Seaton-Tiedeman (Hon. Secretary of the Divorce Law Reform Union) (a visitor), and opposed by Miss J. M. Bernal Greenwood, M.B.E.

Rules and Orders.

CHILDREN AND YOUNG PERSONS ACT, 1933.

The following Rules and Orders have been received from the Home Office:—

The Approved School Rules, 1933, dated July 28, 1933, made by the Secretary of State, for the management and discipline or approved Schools under paragraph 1 of the Fourth Schedule of the Children and Young Persons Act, 1933 (23 & 24 Geo. 5. c. 12).
(S. R. & O., 1933, No. 774. Price 3d.)

The Children and Young Persons (Authorised Persons) General Order (No. 1), 1933, dated September 28, 1933, made by the Secretary of State under section 62 of the Children and Young Persons Act, 1933 (23 & 24 Geo. 5. c. 12).
(S. R. & O., 1933, No. 947. Price 1d.)

The Children and Young Persons (Authorised Persons) General Order (No. 2) 1933, dated September 28, 1933, made by the Secretary of State under section 62 of the Children and Young Persons Act, 1933 (23 & 24 Geo. 5. c. 12).
(S. R. & O., 1933, No. 948. Price 1d.)

The Children and Young Persons (Contributions by Local Authorities) Regulations, 1933, dated September 26, 1933, made by the Secretary of State under section 90 of the Children and Young Persons Act, 1933 (23 & 24 Geo. 5. c. 12).
(S. R. & O., 1933, No. 954. Price 1d.)

The Children and Young Persons (Record of Information) Regulations, 1933, dated September 26, 1933, made by the Secretary of State under section 72 (2) of the Children and Young Persons Act, 1933 (23 & 24 Geo. 5. c. 12).
(S. R. & O., 1933, No. 955. Price 1d.)

The Children and Young Persons (Parental Contributions) Regulations, 1933, dated September 26, 1933, made by the Secretary of State under section 87 of the Children and Young Persons Act, 1933 (23 & 24 Geo. 5. c. 12).
(S. R. & O., 1933, No. 956. Price 1d.)

The Remand Home Rules, 1933, dated October 16, 1933, made by the Secretary of State under section 78 (3) of the Children and Young Persons Act, 1933 (23 & 24 Geo. 5. c. 12).
(S. R. & O., 1933, No. 987. Price 1d.)

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. STEPHEN ALFRED HERMAN TRUMPLER to be a Taxing Master of the Supreme Court to fill the vacancy caused by the retirement of Master Cave. Mr. Trumpler was admitted a solicitor in 1905.

Mr. ARTHUR BURNABY HOWES (Puisne Judge, Gold Coast) has been appointed a Puisne Judge of the Supreme Court of the Straits Settlements.

Mr. J. C. GARDNER, B.A., LL.B., Barrister-at-Law, of the Town Clerk's Office, Newark, has been appointed Committee Clerk at Dagenham. Mr. Gardner was called to the Bar by Gray's Inn last June.

Mr. T. C. HAYWARD, B.A., Senior Assistant Solicitor to the East Sussex County Council, has been appointed Deputy Clerk of the Peace and of the County Council for Warwickshire. Mr. Hayward was admitted a solicitor in 1929.

Professional Announcements.

(2s. per line.)

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS, or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED.

INTERIM DIVIDEND.

The Directors of The Solicitors' Law Stationery Society, Limited, announce that they have decided to revert to the Society's pre-war custom and to pay on the 1st November an interim dividend of 4 per cent., less income tax, in respect of the year 1933.

In a circular letter sent to members, they state that, in taking this step, they have been influenced by the continuance of the improvement in the Society's business indicated by the Chairman in his speech at the Annual General Meeting held in April last.

"BY CANDLE LIGHT."

A special performance of a play, "By Candle Light," adapted from the German of Siegfried Geyer, by Harry Graham, will be given at the Rudolf Steiner Hall, Park Road, Baker Street, W.1, on Monday, 13th November, at 8.30 p.m. The proceeds will be given to The Cancer Hospital (Free), Fulham Road, London, towards reduction of their bank overdraft of £40,000. Tickets are obtainable from the Secretary at the Hospital.

THE INSTITUTE OF ARBITRATORS (INCORPORATED).

A practice arbitration will be held on Wednesday, 15th November, at 6 p.m., at the Incorporated Accountants' Hall (near Temple Station), Victoria Embankment, W.C.2. The subject is "A Dispute between a Building Contractor and Sub-contractor." The award will be made immediately after the hearing, and it is hoped there will be time for a discussion. The points of claim are set out in the October issue of the Journal. Members are reminded that non-members can attend upon notifying the Secretary of their intention. In order that adequate arrangements can be made, those who intend to be present are requested to notify the Secretary on or before Monday, 13th November, but no tickets of admission are required.

ACCIDENT CASES IN THE HIGH COURT.

Mr. Justice Charles recently protested against what he described as the waste of time in the High Court with "running down" cases. There were county courts available for these little accident cases, he said. The time of the High Court was being wasted in the most wicked way, and he hoped that what he had said might not be altogether unheeded.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Witness. Part II.	MR. JUSTICE MAUGHAM. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Nov. 6	Hicks Beach	Blaker	*Hicks Beach	*Blaker
,, 7	Andrews	Ritchie	Blaker	*Jones
,, 8	Jones	More	*Jones	*Hicks Beach
,, 9	Ritchie	Hicks Beach	Hicks Beach	Blaker
,, 10	Blaker	Andrews	*Blaker	*Jones
,, 11	More	Jones	Jones	Hicks Beach

DATE.	GROUP I. MR. JUSTICE BENNETT. Non-Witness.	MR. JUSTICE CLAUSON. Witness. Part I.	GROUP II. MR. JUSTICE LUXMOORE. Non-Witness.	MR. JUSTICE FARWELL. Witness. Part II.
	Mr.	Mr.	Mr.	Mr.
Nov. 6	Jones	*Andrews	More	Ritchie
,, 7	Hicks Beach	*More	Ritchie	*Andrews
,, 8	Blaker	*Ritchie	Andrews	More
,, 9	Jones	*Andrews	More	*Ritchie
,, 10	Hicks Beach	More	Ritchie	Andrews
,, 11	Blaker	Ritchie	Andrews	More

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 9th November, 1933.

	Div. Months.	Middle Price 31 Oct. 1933.	Flat Interest Yield.	†Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	110½	3 12 5	3 6 9
Consols 2½%	JAJO	73¾	3 7 9	—
War Loan 3½% 1952 or after	JD	100¼xd	3 9 10	3 9 8
Funding 4% Loan 1960-90	MN	111¾	3 11 7	3 6 5
Victory 4% Loan Av. life 29 years	MS	110½	3 12 5	3 8 7
Conversion 5% Loan 1944-64	MN	117	4 5 6	3 0 0
Conversion 4½% Loan 1940-44	JJ	111½	4 0 9	2 10 11
Conversion 3½% Loan 1961 or after	AO	100½	3 9 8	3 9 5
Conversion 3% Loan 1948-53	MS	99⅛	3 0 6	3 1 3
Conversion 2½% Loan 1944-49	AO	93¾	2 13 4	3 0 5
Local Loans 3% Stock 1912 or after	JAJO	86⅝	3 9 3	—
Bank Stock	AO	349½	3 8 8	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	78½	3 10 1	—
India 4½% 1950-55	MN	108¾xd	4 2 9	3 15 9
India 3½% 1931 or after	JAJO	86¾	4 0 8	—
India 3% 1948 or after	JAJO	74½	4 0 6	—
Sudan 4½% 1939-73	FA	111	4 1 1	2 3 2
Sudan 4% 1974 Red. in part after 1950	MN	108	3 14 1	3 7 6
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	100	3 0 0	3 0 0
COLONIAL SECURITIES				
*Australia (Commonw'th) 5% 1945-75	JJ	111	4 10 1	3 16 9
*Canada 3½% 1930-50	JJ	101	3 9 4	—
*Cape of Good Hope 3½% 1929-49	JJ	101	3 9 4	—
Natal 3% 1929-49	JJ	96	3 2 6	3 6 11
New South Wales 3½% 1930-50	JJ	99	3 10 8	3 11 7
*New South Wales 5% 1945-65	JD	110½	4 10 6	3 17 9
*New Zealand 4½% 1948-58	MS	108	4 3 4	3 15 0
*New Zealand 5% 1946	JJ	111	4 10 1	3 16 8
*Queensland 4% 1940-50	AO	102	3 18 5	3 13 5
*South Africa 5% 1945-75	JJ	114	4 7 9	3 11 0
*South Australia 5% 1945-75	JJ	110	4 10 11	3 18 9
*Tasmania 3½% 1920-40	JJ	101	3 9 4	—
Victoria 3½% 1929-49	AO	99	3 10 8	3 11 8
*W. Australia 4% 1942-62	JJ	102	3 18 5	3 14 2
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	86	3 9 9	—
*Birmingham 4½% 1948-68	AO	112	4 0 4	3 9 3
*Cardiff 5% 1945-65	MS	111	4 10 1	3 16 9
Croydon 3% 1940-60	AO	94	3 3 10	3 7 1
*Hastings 5% 1947-67	AO	113	4 8 6	3 14 4
Hull 3½% 1925-55	FA	99	3 10 8	3 11 4
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	99	3 10 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	73	3 8 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	86½	3 9 4	—
Manchester 3% 1941 or after	FA	86	3 9 9	—
Metropolitan Consd. 2½% 1920-49	MJSD	93½	2 13 6	3 0 5
Metropolitan Water Board 3% "A" 1963-2003	AO	87½	3 8 7	3 9 7
Do. do. 3% "B" 1934-2003	MS	88½	3 7 10	3 8 9
Do. do. 3% "E" 1953-73	JJ	95	3 3 2	3 4 6
*Middlesex C.C. 3½% 1927-47	FA	101	3 9 4	—
Do. do. 4½% 1950-70	MN	112	4 0 4	3 11 0
Nottingham 3% Irredeemable	MN	85	3 10 7	—
*Stockton 5% 1946-66	JJ	112	4 9 3	3 16
ENGLISH RAILWAY PRIOR CHARGES				
Gt. Western Rly. 4% Debenture	JJ	104	3 16 11	—
Gt. Western Rly. 5% Rent Charge	FA	119½	4 3 8	—
Gt. Western Rly. 5% Preference	MA	105½	4 14 9	—
‡L. & N.E. Rly. 4% Debenture	JJ	100	4 0 0	—
‡L. & N.E. Rly. 4% 1st Guaranteed	FA	91½	4 7 5	—
‡L. Mid. & Scot. Rly. 4% Debenture	JJ	102	3 18 5	—
‡L. Mid. & Scot. Rly. 4% Guaranteed	MA	95	4 4 3	—
Southern Rly. 4% Debenture	JJ	104	3 16 11	—
Southern Rly. 5% Guaranteed	MA	118½	4 4 5	—
Southern Rly. 5% Preference	MA	105½	4 14 9	—

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

‡ These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Companies' Ordinary Stocks for the past year.

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L. R. FERGUSSON, *Secretary.*

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